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10/797,184	03/11/2004	Kenneth Lowe	7561.00	4953

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EXAMINER	
CHEUNG, VICTOR	

ART UNIT	PAPER NUMBER
3714	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/797,184	LOWE, KENNETH	
	Examiner	Art Unit	
	VICTOR CHEUNG	3714	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *13 February 2008*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *54-90* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *54-90* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *13 February 2008* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

1. The action is in response to Applicant's amendment/response filed 02/13/2008.

Claims 53-90 are pending.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 70, 88, and 90 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Re Claims 70 and 88: Claims 70 and 88 recite the limitation "wherein the appropriate time comprises a person upon completion of the designated task." It is unclear as to what these limitations are trying to claim and how a time can comprise a person. For these reasons that the scope of the claims cannot be determined, claims 70 and 88 have been precluded from further examination.

Re Claim 90: Claim 90 recites the limitation "the computer program" in line 3. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 53, 58, 71, 76, 89, and 90 are rejected under 35 U.S.C. 102(b) as being anticipated by Blumenthal (US Patent No. 6,565,504).

Re Claims 53, 71, 89, and 90: Blumenthal discloses a method of attaining a target goal with categorized electronically recallable media (Abstract), comprising inputting a target goal specific to a particular user in a computer program (Fig. 4; Col. 3, Lines 39-46), permitting the particular user to custom select electronically recallable media samples possessing subject matter containing sensory stimuli for evoking a selected emotional state in the particular user (Fig. 2-3), and electronically presenting the particular user with the media samples at an appropriate time to promote completion of a designated task or cessation of a behavior related to attaining the target goal (Col. 3, Line 60-Col. 4, Line 2). Blumenthal discloses the method implemented by a computer readable medium (Col. 2, Lines 16-20). Blumenthal discloses the method implemented with a computing device, an input device, an output device, and data storage (Col. 2, Lines 57-65).

Re Claims 58 and 76: Blumenthal discloses presenting audio samples via an output unit (Fig. 2, "Play"; Abstract).

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

7. Claims 54-57, 59-61, 63-69, 72-75, 77-79, and 81-87 are rejected under 35 U.S.C. 103(a) as being unpatentable over Blumenthal (US Patent No. 6,565,504) in view of Blazey et al. (US Patent No. 6,293,904).

Re Claims 54, 56, 72, and 74: Blumenthal discloses presenting the user with the media samples (Fig. 2, "Play"). Blumenthal also discloses the media labeled electronically recallable sets (Fig. 2; also Col. 4, Lines 3-7).

However, Blumenthal does not specifically disclose permitting the particular user to provide personal responses to the sensory stimuli of the media samples, determining from the personal responses whether the media samples evoke the selected emotional state in the particular user, and assigning media samples evoking the selected emotional state in the particular user to an electronically recallable set, the electronically recallable set being labeled with an emotional state identifier corresponding to the selected emotional state.

Blazey et al. discloses presenting the user with the media samples (Col. 5, Lines 35-37), permitting the particular user to provide personal responses to the sensory stimuli of the media samples (Col. 5, Lines 41-46), determining from the personal responses whether the media samples evoke the selected emotional state in the particular user, and assigning media samples evoking the selected emotional state in the particular user to an electronically recallable set, the electronically recallable set being labeled with an emotional state identifier corresponding to the selected emotional state (Col. 5, Lines 47-51). (Col. 3, Lines 53-67).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to permit the user to provide responses, determine if an emotional state is evoked, and then assign the media to electronic sets, thereby generating a personal media profile specific to the user.

Re Claims 55, 69, 73, and 87: Blumenthal discloses the appropriate time comprising a period during performance of the designated task (Col. 3, Line 60-Col. 4, Line 2).

Re Claims 57, 59, 60, 75, 77, and 78: Blumenthal does not specifically disclose the permitting step including a visual sample via a display unit or an olfactory sample.

Blazey et al. disclose that visual, auditory, olfactory, and tactile stimuli can be used (Col. 5, Lines 16-30).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to include visual, auditory, and olfactory stimuli, thereby achieving the predictable result of providing a plurality of stimuli for evoking user emotions.

Re Claims 61 and 79: Blumenthal discloses saving media as typically done with computer technology (Col. 4, Lines 3-7).

However, Blumenthal does not specifically disclose storing the media samples in an electronic database.

Blazey et al. disclose that images may reside in local or remote databases, and also that personal image clusters can be saved to a database (Col. 5, Lines 18-19; Col. 17, Lines 57-61).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to store the media samples in an electronic database such that the media samples can be easily retrieved at a later time.

Re Claims 63 and 81: Blumenthal does not specifically disclose permitting an outside evaluator to determine from the personal responses whether the media samples evoke the selected emotional state in the particular user.

Blazey et al. disclose an outside evaluator determining from the personal responses whether the media samples evoke the selected emotional state in the particular user (Col. 19, Line 33-Col. 20, Line 11).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have an outside evaluator determine if the media sample evokes an emotional state, thereby providing an evaluation that is largely unbiased as compared to the user being his own evaluator.

Re Claims 64-66 and 82-84: Blumenthal does not specifically disclose determining whether the personal responses meet a predefined criterion for evoking the selected emotional state in the particular user, wherein the personal responses comprise physiological and/or physical responses of the particular user and the predefined criterion comprises predetermined physiological and/or physical levels, and wherein the method further comprises measuring and/or recording the physiological and/or physical responses via an external device, wherein the external device carries out at least one technique selected from the group consisting of EEG, PET, CAT, and MRI.

Blazey et al. disclose determining whether the personal responses meet a predefined criterion for evoking the selected emotional state in the particular user (Col. 8, Lines 7-20), wherein the personal response is measured using an EEG sensor (Col. 7, Lines 26-28).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to determine whether the personal responses meet a predefined criterion for evoking the selected emotional state in the particular user, thereby providing a metric for analysis. It would have been obvious to one of ordinary skill in the art at the time the invention was made to use an EEG sensor such that an accurate determination using physiological signals can be obtained.

Re Claims 67-68 and 85-86: Blumenthal discloses that inputting can comprise of selecting the target goal from an existing list or adding a new target goal to the computer program (Col. 3, Lines 39-51).

8. Claims 62 and 80 are rejected under 35 U.S.C. 103(a) as being unpatentable over Blumenthal (US Patent No. 6,565,504) in view of Zaltman (US Patent No. 6,315,569).

Re Claims 62 and 80: Blumenthal does not specifically disclose permitting the particular user to determine whether the media samples evoke the selected emotional state.

Zaltman discloses a method including presenting visual and non-visual sensory stimuli to a user and having the user describe the stimuli and emotions that are elicited (Col. 2, Line 45-Col. 3, Line 50).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to permit the user to determine if the media sample evokes an emotion state, thereby achieving the predictable result of eliciting a direct response from the user.

Response to Arguments

9. Applicant's arguments with respect to claims 1-52 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL.** See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to VICTOR CHEUNG whose telephone number is (571)270-1349. The examiner can normally be reached on Mon-Fri, 9-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Pezzuto can be reached on (571) 272-6996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/V. C./
Examiner, Art Unit 3714

/Ronald Laneau/
Supervisory Patent Examiner, Art Unit 3714
05/27/08